

APPEAL NO. 040753  
FILED MAY 5, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on August 28, 2003, and reconvened on February 12, 2004. The hearing officer resolved the disputed issue by determining that the appellant (claimant) is not entitled to supplemental income benefits (SIBs) for the 17th quarter. The claimant appeals this determination and attaches new evidence, which was not admitted at the hearing, to his request for review. The respondent (carrier) urges affirmance of the hearing officer's decision.

DECISION

Affirmed.

Subsequent to filing his request for review, the claimant submitted a supplement to his appeal, which consists of a medical record dated April 7, 2004. However, the supplement was not filed within the time period for filing a timely appeal and, consequently, will not be considered.

The claimant attached new evidence to his timely filed appeal, which was not offered into evidence at the hearing and appears to be related to a dispute involving the 19th and 20th quarters. Documents submitted for the first time on appeal are generally not considered unless they constitute newly discovered evidence. Texas Workers' Compensation Commission Appeal No. 93111, decided March 29, 1993; Black v. Wills, 758 S.W.2d 809 (Tex. App.-Dallas 1988, no writ). Upon our review, the evidence offered is not so material that it would probably produce a different result. The evidence, therefore, does not meet the requirements for newly discovered evidence and will not be considered on appeal.

Section 408.142 provides that an employee continues to be entitled to SIBs after the first compensable quarter if the employee: (1) has not returned to work or has earned less than 80% of the employee's average weekly wage as a direct result of the impairment; and (2) has in good faith sought employment commensurate with his ability to work. Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102) provides the theories which a claimant can rely upon to satisfy the good faith requirement. Whether the claimant satisfied the good faith requirement was a factual question for the hearing officer to resolve. The hearing officer is the sole judge of the relevance, materiality, weight, and credibility of the evidence presented at the hearing. Section 410.165(a). It was the hearing officer's prerogative to believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Nothing in our review of the record indicates that the hearing officer's decision that the claimant is not entitled to 17th quarter SIBs is so against the great weight and

preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

With regard to the claimant's argument on appeal that the hearing officer incorrectly found that the claimant's impairment rating (IR) is 15%, we would point out that the hearing officer merely determined that the claimant's IR is 15% *or greater*, as this finding is a prerequisite to SIBs entitlement. Likewise, the finding that the claimant did not elect to commute any portion of his impairment income benefits is also a prerequisite to SIBs entitlement.

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **LIBERTY INSURANCE CORPORATION** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEMS  
350 NORTH ST. PAUL STREET, SUITE 2900  
DALLAS, TEXAS 75201.**

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Chris Cowan  
Appeals Judge

CONCUR:

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Elaine M. Chaney  
Appeals Judge

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Veronica L. Ruberto  
Appeals Judge